

EXHIBIT 1

INTRODUCTION

Respondent Mervyn Dymally (“Dymally”) was a successful candidate for the California State Assembly in the March 2002 primary and November 2002 general election. Respondent Friends of Dymally (“Committee”) was Respondent Dymally’s controlled committee. Respondent Ida E. Yarbrough (“Yarbrough”) served as Respondent Committee’s treasurer.

On October 4, 2002, Respondents Dymally and Committee, through their representative Olson, Hagel, Waters, & Fishburn, LLP, sent a letter advising the Enforcement Division that Respondents Dymally and Committee exceeded the voluntary expenditure limits for the March 2002 primary election campaign. Additionally, the Franchise Tax Board (“FTB”) conducted an audit of Respondent Committee for the period January 1, 2001 through December 31, 2002. The audit report was submitted on November 26, 2003. During the period covered by the audit, Respondent Committee received approximately \$587,526 in contributions and made approximately \$645,981 in expenditures. The FTB found that Respondent Dymally, Committee, and Yarbrough made campaign expenditures in excess of the \$400,000 voluntary expenditure ceiling Respondent Dymally had accepted in connection with the March 5, 2002 primary election for State Assembly.

For the purposes of this stipulation, Respondents’ violations of the Political Reform Act (the “Act”)¹ are stated as follows:

COUNT 1: Respondents Mervyn Dymally, Friends of Dymally, and Ida E. Yarbrough made campaign expenditures of approximately \$483,612 in connection with the March 5, 2002 primary election for State Assembly, which exceeded the \$400,000 voluntary expenditure ceiling, in violation of section 85400, subdivision (a)(1).

SUMMARY OF THE LAW

Voluntary Expenditure Ceilings

Under section 85401, subdivision (a), candidates for elective state office must declare on the candidate intention statement (Form 501), filed with the Secretary of State,

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

whether they accept or reject the voluntary expenditure limits for both the primary and general (or special primary and special general) elections set forth in section 85400.

A candidate for State Assembly who voluntarily accepts expenditure limits may not make campaign expenditures in excess of four hundred thousand dollars (\$400,000) in the primary or special primary election and seven hundred thousand dollars (\$700,000) in the general or special general election. (Section 85400, subd. (a)(1).) Expenditures that count toward the voluntary expenditure ceiling include only “campaign expenditures,” which have the same meaning as “election-related activities” as defined in clauses (i) to (vi), inclusive, and clause (viii) of subparagraph (C) of paragraph (2) of subdivision (b) of section 82015. (Section 85400, subd. (b).)

Under section 85403, any candidate who files a statement of acceptance of the voluntary expenditure ceilings pursuant to section 85401 and makes campaign expenditures in excess of the limits has violated the voluntary expenditure limits, and is subject to the remedies in Chapter 3 and Chapter 11.

Treasurer Liability

Under section 81004, subdivision (b), section 84100, and regulation 18427, subdivision (a), it is the duty of a committee’s treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee’s treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

Respondent Dymally, a former California Assembly member, State Senator, Lt. Governor, and U.S. Congressman, was a successful candidate for the California State Assembly, 52nd District, in the March 5, 2002 primary and November 5, 2002 general elections. Respondent Committee was Respondent Dymally’s controlled committee, which was formed in August 2001, and terminated in August 2005. At all relevant times, Respondent Yarbrough served as Respondent Committee’s treasurer.

COUNT 1

Making Campaign Expenditures in Excess of the Voluntary Expenditure Ceiling

Respondent Dymally executed his Candidate Intention Statement for the State Assembly on November 24, 2001, and subsequently filed it with the Secretary of State (“SOS”) on or about January 2, 2002. Respondent Dymally declared on this form that he accepted the voluntary expenditure ceilings of \$400,000 for the 2002 primary, and \$700,000 for the 2002 general election for State Assembly.

Respondents' semi-annual campaign statement for the reporting period from February 17, 2002, through June 30, 2002, filed with the SOS on or about July 31, 2002, reflects that Respondents made cumulative expenditures of \$482,578.46 subject to the voluntary expenditure limit in connection with the March 5, 2002 primary election.

On October 4, 2002, Respondents Dymally and Committee, through their representative Olson, Hagel, Waters, & Fishburn, LLP, sent a letter to the FPPC Enforcement Division advising that Respondents Dymally and Committee exceeded the voluntary expenditure limits by \$82,578.46 during the final two weeks of the March 2002 primary election campaign. The letter set forth background and mitigating information regarding the violation, including the following: 1) with 16 days left before the election, Respondents had \$167,000 left in permitted expenditures; 2) without Respondent Dymally's direct knowledge, during the final two weeks of the campaign Respondents expended or accrued expenditures totaling \$250,000; 3) Respondents' overall campaign consultant left the campaign early; 4) the lack of coordination among three newly hired consultants contributed to the excessive expenditures; 5) no one person was in charge of overseeing the day to day expenditures, resulting in unanticipated and excessive charges; and 6) Respondent Dymally won the primary election with 52% of the vote, while his nearest rival received less than 23%.

In a letter to the FTB dated August 27, 2003, Respondent Yarbrough acknowledged that Respondent Committee exceeded the voluntary expenditure limits that Respondent Dymally had accepted, and listed mitigating factors similar to those in the letter of October 4, 2002, referenced above. The FTB, working with Respondent Yarbrough, found that Respondents made cumulative campaign expenditures of \$483,612 in connection with the March 5, 2002 primary election.

On January 7, 2004, the Enforcement Division received a letter from Respondent Dymally responding to the FTB audit, in which he admitted the violation and provided an explanation. Respondent Dymally stated that he was not familiar with the provisions of Prop 34, and assumed the acceptance of the voluntary expenditure ceiling was voluntary and for a public relations purpose. Respondent Dymally said he never dreamed the campaign would cost as much as \$400,000, and the expenditures "became necessary" because in the midst of the campaign his manager left abruptly, leaving the consultants incurring costs without any controls. Additionally, and more significantly, Respondent Dymally believed an attack by his opposition necessitated radio, television, and mailing responses "at a magnitude not envisioned at the time" he accepted the voluntary expenditure ceilings. Respondent Dymally emphasized that he did not intend to violate the law.

By making campaign expenditures in excess of the \$400,000 voluntary expenditure ceiling Respondent Dymally had accepted in connection with the March 5, 2002 primary election for State Assembly, Respondents violated section 85400, subdivision (a)(1).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of Five Thousand Dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the Respondent, upon learning of the violations, voluntarily filed appropriate amendments to provide full disclosure.

This is the first voluntary expenditure ceiling violation the Commission has prosecuted. Violating the voluntary expenditure ceiling is a serious violation. A candidate who declares on the statement of intention that he or she accepts the expenditure ceiling, under penalty of perjury, receives the benefit of being designated as having accepted the ceiling in the state ballot pamphlet or the voter information portion of the sample ballot, and may purchase space to place a 250 word statement there. Thus, the voters might rely on this information when deciding which candidate to select. Respondents stated that Respondent Dymally was not familiar with Prop 34 provisions and assumed his acceptance of the voluntary expenditure ceiling was voluntary, non-binding, and non-enforceable. Respondent Dymally is a very experienced candidate and his assumption that the expenditure limits were voluntary and non-enforceable is not credible. Sections 85400 through 85404 clearly set forth the requirements regarding voluntary expenditure ceilings, including what the limits are, the prohibition, the process of accepting or rejecting the limits, and even the specific consequences of violating the limits. Respondents Dymally and Yarbrough had a duty to comply with these provisions of the Act concerning the expenditure of Respondent Committee's funds. (Regulation 18427.)

Respondents also indicated that a lack of coordination among campaign consultants after the manager left contributed to the excessive expenditures, and that Respondent Dymally did not intend to violate the expenditure limits. While it does not appear that Respondents intended to violate the law, it does appear that they intended to spend whatever was necessary to respond to what Respondent Dymally characterized as a vicious attack by his opposition. In doing so, Respondents exceeded the expenditure ceiling by \$83,612, a significant amount of the expenditures made for the primary. In mitigation, there was no intent to deceive the public as the expenditures were properly reported, and Respondents voluntarily notified the Enforcement Division as soon as they discovered the expenditure ceiling was binding and enforceable, and that it had been exceeded.

Accordingly, the facts of this case justify a total administrative penalty of Three Thousand Eight Hundred Dollars (\$3,800) for Respondents' violation of the Act.